

LEGAL ASPECTS CONCERNING THE REGULATION OF LAND RELATIONS IN THE REPUBLIC OF MOLDOVA

Efim ZUBCO, Senior Lecturer, State Agrarian University of Moldova, Faculty of Cadastre and Law, Chişinău, 42 Mirceşti St., Republic of Moldova, phone: +37369238114, e-mail: e.zubco@uasm.md

Abstract: *The land is the greatest natural wealth inherited by a country. In this context, the state has not only the right but also the obligation to protect and properly manage it by developing and implementing new mechanisms and methods.*

State policy concerning the regulation of land relations is reflected in the development of legal norms (normative acts). The regulation of land relations based on the legislative acts represents an objective necessity and it should correspond to the evolution of land reform. It should be also noted the need to harmonize land legislation of the Republic of Moldova with the law requirements of the European Union.

Key words: *Land relations, Property, Land Code, Regulation, Administration.*

1. General aspects

Regulation – a set of legal norms applicable in a specific field.

Land relations - all relationships (links) arising between the subjects of land relations and their object, manifested in the process of land fund use.

The subjects of land relations are: physical persons; juridical persons; public authorities (local public administration, state's public authorities).

The object of land relations is all lands (land fund) within the borders of the Republic of Moldova.

Land relations are part of the socio-economic relations regulated by the legal framework in force and are focused on the rational use of the land fund.

The legislative or normative methods represent all laws and other normative acts issued by state which reflect the policy promoted by it in accordance with the socio-economic situation of the country.

The implementation of these methods in regulating land relations in concrete conditions is inevitable. This process involves developing the legal-normative framework appropriate to the current situation of land relations. In this sense, the supreme law is the Constitution of the Republic of Moldova.

The process of regulation of land relations includes the following stages:

- a) formulating legal rules regulating land relations;
- b) identifying concrete lands to which the formulated legal rules could be applied;
- c) establishing public authorities monitoring and controlling the regulation of land relations;
- d) informing each owner about the object of the regulated land relations;
- e) monitoring the situation and implementing forced measures.

The effectiveness of the process regulating land relations will depend on the correct formulation of the established regulatory norms. The legal status of each land and the

regulatory norms are established according to the land use plan which is brought to the attention of each owner.

However, state policy in land relations is reflected in the Land Code no. 828-XII of 25.12.1991 with all modifications that have been made so far. At present, it has been developed a draft of the new Land Code which includes a new content regulating land relations in current conditions of market economy. The regulation of land relations based on the legislative acts represents an objective necessity and should correspond to the evolution of land reform. The need to align Moldova’s land legislation with the requirements of the European Union law supposes the elaboration of a series of normative acts in the field of land relations and the reformation of the existing ones.

The concept connected to the regulation of land relations of a country is reflected through the legislative framework developed and updated to meet current requirements of the reform (see Figure 1). In this context, it should be noted that there is the legal and institutional framework for the administration and control of the regulation of land relations.

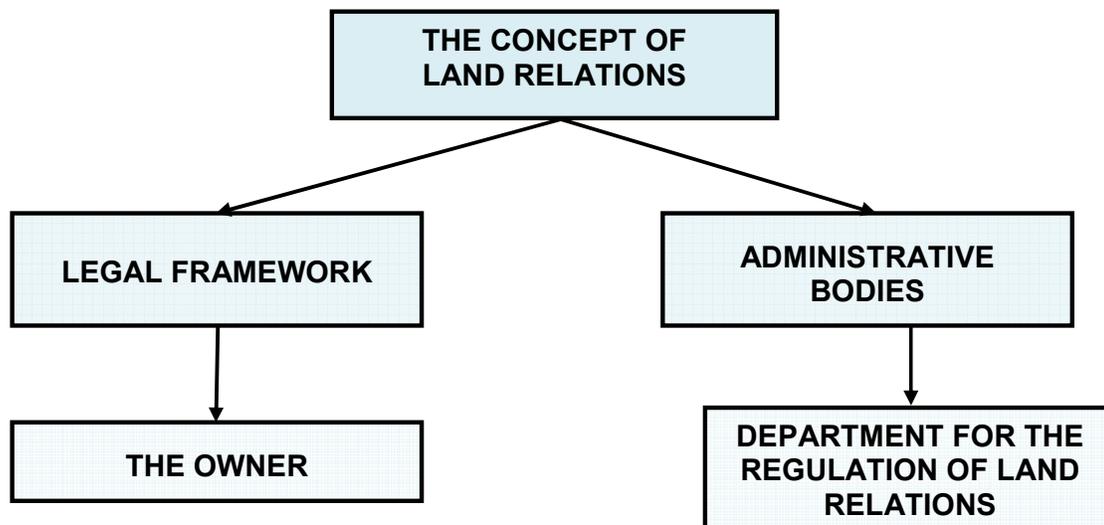


Figure 1. The concept of regulation of land relations in the Republic of Moldova

Source: elaborated by the author

The purpose of this paper was to study the local basic legislative framework concerning the regulation of land relations and its harmonization with community needs. Given the political vector of the Republic of Moldova oriented towards European integration it is necessary to develop a number of other laws and regulations in line with EU standards.

Land reform involves modifications in the legislation relating to land ownership. These modifications have to pursue a more efficient use of land, especially the agricultural land. Such a reform has the effect of changing social and economic relations in the country.

2. The sphere of regulation

The Land Code, as the basic legislative act regulating land relations, differs from other acts by its approach to the problems. An important role in formulating correctly the legal norms is played by the detailed knowledge of the object of regulation - land relations.

Land relations are constantly developing. If the society does not respond to the modification of land relations then a crisis could occur. In this context, reforming the

normative framework at this stage represents an objective necessity which should be achieved.

Land relations, in the period 1990 – 1995, had the content of initiating the reform of social, economic and land relations. The legislative framework, at that stage, had the aim of land privatization and transition to market land relations. That period has long ago passed but the legislative framework remained unchanged.

The lack of appropriate amendments to the legal framework in line with the current situation creates a crisis situation, the one that we've got at present.

The draft of the new Land Code should regulate land relations in terms private property and market relations.

2.1 Land tenure

Land tenure is a social category arising within the regulated land relations. Land relations are reported to land tenure (land ownership) as a social category. Without the existence of land ownership, land relations wouldn't exist. We can say that these relationships derived from property. Therefore, the description of land tenure holds the most important role in the Land Code.

Similarly as we did in the case of the object of the Land Code, it is necessary to do with the property, i.e. to break it down into as smaller parts as possible: public property, private property, state property, the property of administrative-territorial units, common private property etc. The decomposition of property is already carried out in the Civil Code. The already established set of rules will be applied in the Land Code.

As for "land ownership", the "entitlement" has an important role. It is not correct to ban foreigners to invest in agricultural enterprises (juridical persons). Foreign land ownership is prohibited. In the agricultural enterprises the land is personified. The share of land is registered separately. If we have the purpose to isolate foreigners, it is possible to do it, i.e. to isolate them in the process of land registration. If there is a lack of legal norms, they should be developed, but we don't have to "banish" foreigners as they already don't visit us. Often, "our citizens" are more dangerous than foreigners as they buy all the lands in our villages, becoming land owners.

2.2 The process of regulation of land relations

Land tenure rights are protected by the Constitution of the Republic of Moldova (art. 46). The alienation of ownership rights can be done voluntarily or forcibly. Voluntary alienation of land tenure rights is carried out with the permission of the parties through a legal act. Forced alienation of landed tenure rights can be done according to the Constitution (art. 46) only due to a reason of public utility with fair and prior compensation.

At present, the field of land relations includes many directions that require regulation. For instance, land consolidation became a very current issue that can't be ignored. Also, a number of specialized cadasters are required for the regulation of land relations.

Taking into account that the Land Code has not changed for too long in accordance with the objective needs, the inclusion of all directions within a single law or within a Land Code may lead to the misunderstanding of its essence.

Therefore, it would be more reasonable to develop, concomitantly with the Land Code, a set of other legislative acts that would complete the content of land relations. In our country, a simpler law is better understood and easier to implement. Obviously, all these laws will be drafted in the process of Land Code development.

The problem of planning, management and land use is becoming increasingly important as it is based on the indubitable fact that land is a limited natural resource. This situation requires the development of a legislative framework in this area.

The state has an important role in monitoring the process of land use, administering financial resources and planning actions that would have a positive impact on the land. Thus, as we can see, this sphere is both very broad and important.

Another aspect of the legislative framework pertaining to the regulation of land relations is related to the modification of the land use category. The problem of changing land use category has a long history. It is based on the fact that there are many disagreements between the interest of the state and owner's interest. Usually, the land owner initiates the change of the land use category and the government doesn't approve it.

The need to restrict the approval of the process of changing land use category is sometimes obvious and it must be done in accordance with the law in force.

Example. The need to prohibit the change of the use category of superior quality land is established by law. All landowners must comply with this rule. But this does not mean that in all cases of changing the land use category, owners must go through troubles and humiliation.

It is necessary to recognize that: the change of land use category represents the right of the owner and nobody has the right to prohibit it. Under this view, all current legal norms should be formulated including the provisions of the new Land Code.

The administrative methods of regulation of land relations are executed by the owner and refer to the correct determination of management.

A very useful mechanism in regulating the change of land use category could and should be the Cadastral Information System, i.e. its basic element - the Real Estate Register.

[1]

3. Ensuring the informatization of the regulation of land relations

Moldova is an agricultural country for centuries, with many traditions formed under the influence of specific climatic, geographic and socio-economic conditions. For the Republic of Moldova, a developed agriculture means, first of all, a strong economy, high social conditions and a developed country.

At this stage, it is necessary to mention that the progress in all areas of social development is a derivative of informatization and respectively of advanced technologies. Agriculture is not an exception.

The specific features of agriculture development in Moldova at present are manifested, first of all, through the aspects of land reform implementation and then, through the massive influence of the universal progress, based on informatization and technologization.

Land relations' reform promoted in the Republic of Moldova, starting with the 1985-1990s, spread primarily over the basic foundation of the economy – land tenure rights and the respective organizational and legal forms.

Current period (2010-2015) can be already determined as a post - privatization stage. The privatization of agricultural lands and other agricultural goods could be fairly considered as a cornerstone of the reform in agriculture and of the economic reform as a whole.

In Moldova, as in the whole post-Soviet space, for a long period of time (years 1950-1990), private ownership of land was excluded from the essence of economic categories. This situation, when private property, including land tenure, is missing from the economic sphere for a long time, led to the creation of a specific socio-economic environment.

It is incorrect to assume that the exclusion of private property from the structure of economic categories over the land and respectively returning again to private property, as it happened, i.e. such fundamental economic changes can't be made without a negative economic impact.

The property, as a socio-economic category as a whole including private property, has a major influence on all areas: economic, social, ecologic, etc. But namely the right to private ownership of agricultural land has oriented and focused largely the rural sector towards a new structural reform. The private owner, the individual, became the main subject of economic relations, respectively in the economic development of the country.

Changing the property type of agricultural land, has an inevitable influence on the organizational and legal forms, which in turn gives rise to a whole complex of requirements, conditions, modifications, reforms, processes and new phenomena in different areas.

The more complicated the economic relations, the more difficult business conditions, the higher the informational requirements and the more necessary the implementation of a modern agricultural cadastre and an adequate cadastral information system. Real Estate Cadastre contains only general information about the agricultural land, which is insufficient for a good planning and management of the land fund.

In order to achieve an efficient economic activity, the agricultural enterprises of Moldova are required to undertake permanent measures aimed at modernizing the working environment, using the most advanced technologies, implementing the most rational use of agricultural land (parcels) and other agricultural goods as well as protecting them.

These requirements suppose a detailed knowledge of the whole environment where the agricultural producer activates, beginning with the quantitative and qualitative characteristics of land which form the highest value fixed capital and ending with the interests of food consumers. This segment, which is quite vast, will be considered as *the informational interest* of the agricultural cadastre.

All European Community countries pay special attention to the information system in agriculture and this attention is recently increasing.

The level of agricultural intensification inevitably causes significant changes, including the ecological ones regarding the land use which, in their turn, require immediate and efficient actions.

Monitoring the influence of both the anthropogenic and natural factor on the situation in agriculture in order to take the appropriate measures for a given situation represents an important issue, which finally becomes the core function of the agricultural cadastre.

For a better organization of the rural territory, in accordance with modern requirements and practices, it is necessary to update the information system of real estate. At present, this system represents an objective necessity. Based on data provided by cadastre, one can perform a comprehensive analysis of land use taking into consideration the qualitative, quantitative, ecological, legal and other aspects.

At present, the cadastre has not only the function of taxation, but also serves as a source of information in making decisions about the efficient land fund administration including the regulation of land relations. The multifunctionality of cadastre in developed countries represents a current necessity in terms of socio-economic development of these countries.

The regulation of land relations is carried out based on detailed and accurate information provided by the real estate cadastre and other specialized cadastres.

The whole process of regulation of land relations is supported by the following cadastral registers (see Figure 2):

- Real Estate Register;
- Land Register;
- Agricultural Land Register;
- Urban Register;
- Forest Fund Register;
- Water Register;
- Other decisions of the Government.

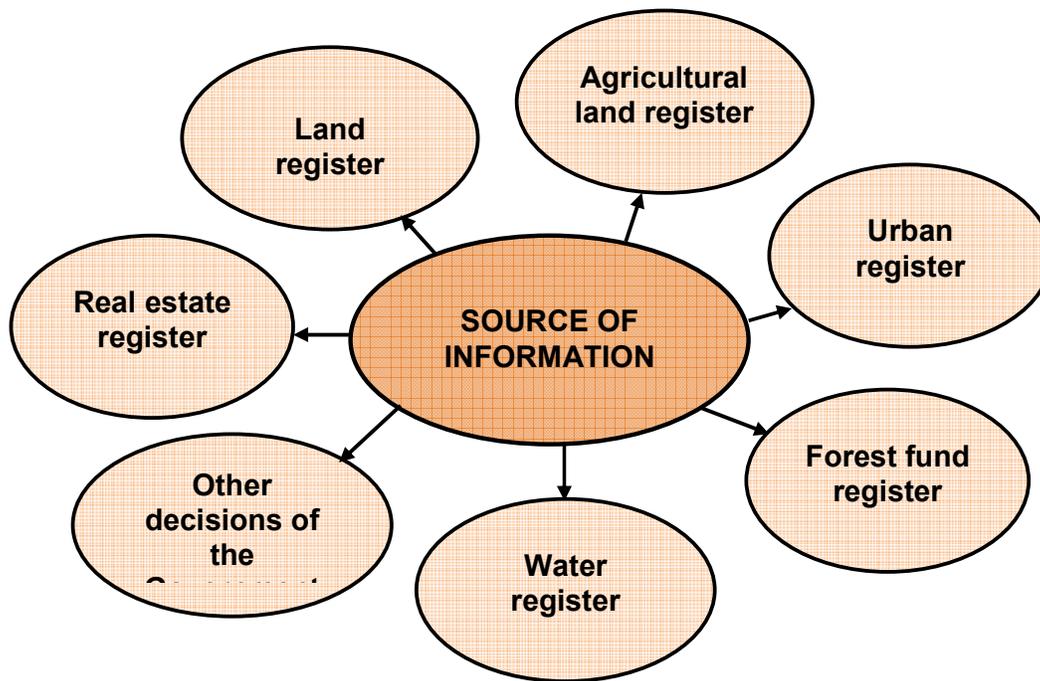


Figure 2. Sources of information concerning the process of regulation of land relations
Source: elaborated by the author

Real estate cadastre (Land Register) will collect, analyze and provide information for the interested applicants about the entire land fund of the country according to the following criteria:

- Category (subcategory) of use;
- Types of property;
- Landowners;
- High quality agricultural land.

The information provided by the Land Register will be used in the implementation and maintenance of specialized cadastres.

Agricultural Cadastre is a specialized cadastre that is maintained in accordance with a special Law of the Agricultural Cadastre. The holder of the agricultural cadastre is the central public authority in the field of agriculture.

Land protection represents an important activity in the process of regulation of land relations and it is managed according to the Law of Land Protection. The monitoring of the land protection process is carried out by the Department of land relations.

The monitoring of soil quality includes the information gathered as a result of permanent control over land, beginning with the need to determine the objective situation, establishing the evolution and estimating the degradation processes, and ending with preparing forecasts and preventing the decision making factors from the need to implement actions controlling negative phenomena, based on the regulation approved by the Government. Soil quality is determined based on broad and detailed pedological, agrochemical, bacteriological, helminthological, radiological and toxicological samples and researches carried out by specialized institutions and stored in the soil's databank.

Urban Cadastre (constructions, facilities and design) is a specialized cadastre which is managed in accordance with the Municipal (Urban) Law. The holder of urban cadastre is the central public authority in the field of constructions, facilities and design and local public authorities.

Forest Cadastre is a specialized cadastre and it is managed in accordance with the Cadastral Forest Law. The holder of Forest Cadastre is the central public authority in the field of forestry.

Water Cadastre is a specialized cadastre which is managed in accordance with the Water Cadastre Law. The holder of Water Cadastre is the central public authority in the field of waters.

3.1 The role of local public administrative bodies in the appropriate regulation of land relations

It is obvious that sometimes the law could be broken, including the Land Code. In such a situation, there are organized special public structures aimed at creating the necessary conditions to comply with the law and monitor the situation in order to detect the violations of the law and develop control measures in accordance with the law.

It is important not to confuse the law and the respective Department. The Department does not regulate any relations it only organizes and monitors the situation.

Each owner or involved person is obliged to obey the law. No public authority is entitled to damage the interests of the owner. Unfortunately, this happens often when changing land use category.

In this case, public authorities assume the function to prohibit the owner from the right to change the land use category, enforcing additional requirements that are not established by the law.

Effective regulation of land relations can be carried out only if there is a detailed knowledge of the situation between the subject and the object. In order to monitor the situation, making controls regarding the compliance with the legislation in force, drafting proposals for implementing forced measures, the Government will create the Department of Regulation of Land Relations – the central public authority in this sphere. Department's structure will be determined by the Regulation approved by the Government.

4. Conclusions

Current land relations in the Republic of Moldova have a specific content corresponding to the post privatization stage. A crucial shortcoming in the current land legislation is the fact that it stopped and trapped in the stage of privatization. Although the privatization was completed in 2000, the legislation still remains unchanged. Therefore, the post-privatization period lacks a legislative framework in the field of land relations.

In this context it is necessary to reform the existing legislative framework and develop new laws that would contribute to effective regulation of land relations. First of all, it is necessary to develop and approve the draft of the new Land Code.

The need for legal regulation of land relations is a mandatory one and it must be aligned to the EU standards. The legal framework should respond without delay to all the changes that take place in society and have a regulatory impact on the whole process of land relations' development. Legally unregulated land relations may have a negative impact on the overall development of the country.

5. References

1. Botnarenco I. *Cadastrul bunurilor imobile în Republica Moldova: teorie, metode, practică*. Chișinău: Pontos, 2012 – 484 p. ISBN 978-9975-51-400-2
2. *Codul Funciar al Republicii Moldova Nr. 828 din 25.12.1991*
3. *Constituția Republicii Moldova din 29.07.1994*
4. *Codul Civil al Republicii Moldova Nr.1107 – XV din 06.06.2002*
5. *Legea condominiului în fondul locativ Nr.913-XIV din 30.03.2000*
6. *Legea privind administrarea și deetatizarea proprietății publice Nr. 121 din 04.05.2007*
7. *Legea privind prețul normativ și modul de vânzare-cumpărare a pământului nr. 1308-XIII din 25.07.97*
8. *Legea exproprierii pentru cauză de utilitate publică nr.488- XIV din 8 iulie 1999*
9. Bohatereț, Valentin-Mihai. *Consolidarea proprietății funciare, fundament al democrației autentice*. – Iași: Terra Nostra, 2004. 306 p. ISBN 973-8432-20-0